

BEFORE THE HONORABLE ANTHONY J. BATTAGLIA, JUDGE PRESIDING

IN RE INCRETIN-BASED THERAPIES,
PRODUCTS LIABILITY LITIGATION

AS TO ALL RELATED AND MEMBER CASES

) CASE NO. 13-MD-02452-AJB
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)
) SAN DIEGO, CALIFORNIA
) DECEMBER 11, 2014
) 3:33 P.M.
)
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
RE: STATUS CONFERENCE

APPEARING TELEPHONICALLY: HONORABLE WILLIAM F. HIGHBERGER

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REPORTED BY STENOTYPE, TRANSCRIPT PRODUCED BY COMPUTER

DECEMBER 11, 2014

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DECEMBER 11, 2014

1 SAN DIEGO, CALIFORNIA; THURSDAY DECEMBER 11, 2014; 3:33 P.M.

2 **DEPUTY CLERK:** CALLING MATTER ONE ON CALENDAR, CASE
3 NUMBER 13MD2452, IN RE INCRETIN MIMETICS PRODUCTS LIABILITY
4 LITIGATION, ON FOR A STATUS HEARING.

5 **THE COURT:** HI, EVERYBODY. JUDGE BATTAGLIA HERE. I
6 BELIEVE JUDGE HIGHBERGER IS JOINING US ON THE PHONE.

7 JUDGE, ARE YOU THERE?

8 **JUDGE HIGHBERGER:** I AM.

9 **THE COURT:** GREAT. AND AS I HAVE TAKEN TO DO IN THE
10 PAST, I HAVE A LIST OF 66 OF THE LAWYERS THAT ARE APPEARING OR
11 ANTICIPATED TO APPEAR. AND SO WE'LL MAKE THAT THE ROSTER OF
12 ATTENDANCE FOR TODAY, AS COURT'S EXHIBIT 1. AND THEN AS YOU
13 SPEAK TODAY IN YOUR VARIOUS ROLES CONCERNING THESE ISSUES, LET
14 ME HAVE YOU START BY IDENTIFYING YOUR NAME AND WHO YOU
15 REPRESENT, EITHER PLAINTIFFS OR DEFENDANT X, Y OR Z.

16 SO I DID GET YOUR JOINT AGENDA AND IT IS SUCCINCT IN
17 ITS NUMBER. AND IT STARTS WITH STATUS OF THE SAS FILES, S-A-S
18 PRODUCTIONS. AND WHO WOULD LIKE TO GIVE US SOME INSIGHT INTO
19 WHAT THE STATUS OF ALL THAT IS AT THIS POINT?

20 (COURT'S EXHIBIT NO. 1 MARKED FOR IDENTIFICATION)

21 **MR. JOHNSON:** YOUR HONOR, GOOD AFTERNOON. THIS IS
22 MIKE JOHNSON ON BEHALF OF THE PLAINTIFFS' STEERING COMPANY.
23 YOUR HONOR, I'M HAPPY TO TAKE THE FIRST STAB AT THAT.

24 WE HAVE REACHED AN AGREEMENT WHEREBY THE DEFENDANTS
25 WOULD PRODUCE THEIR SAS DATA ON DECEMBER 1ST. WE HAD WHAT WE

DECEMBER 11, 2014

1 BELIEVE ARE NOW THE FINAL PRODUCTIONS FROM ALL THE DEFENDANTS.
2 WE HAVE GOTTEN THAT INFORMATION OVER TO OUR EXPERTS. WE
3 HAVEN'T GOTTEN ANY MEANINGFUL FEEDBACK, BUT AT THIS POINT DON'T
4 HAVE ANY REASON TO BELIEVE WE DON'T HAVE THE SAS PRODUCTIONS.
5 SO THAT APPEARS TO BE COMPLETED AT THIS POINT.

6 **THE COURT:** OKAY.

7 **MR. JOHNSON:** AND WE WILL CERTAINLY LET THE COURT
8 KNOW, AND FIRST AND FOREMOST THE DEFENDANTS, IF THAT IS NOT THE
9 CASE.

10 **THE COURT:** OKAY. WELL, THAT'S GOOD NEWS. THE
11 PLAINTIFFS SEEM SATISFIED.

12 AND FROM THE DEFENSE STANDPOINT, IS THERE ANYTHING
13 COUNSEL FOR THE VARIOUS DEFENDANTS WANT TO ADD?

14 HEARING NOBODY JUMP TO THE MIKE, THEN I WILL CONSIDER
15 THAT THE SAS FILE PRODUCTIONS AT THIS POINT ARE CURRENT. AND
16 THEN, HOPEFULLY, THE EXPERTS DON'T LATER TELL US THEY ARE
17 SOMEHOW LACKING. BUT IF THEY DO, WE'LL DEAL WITH IT THEN. SO
18 THAT'S NUMBER ONE.

19 NUMBER TWO IS THE COMMON BENEFIT ORDER WITH TWO AREAS
20 OF DISPUTE, AS I MAKE OUT FROM THE PAPERS. AND WORKING FROM
21 THE ORDER THAT WAS ENTERED -- FOR REFERENCE, THAT WAS DOCUMENT
22 576 -- LET'S TAKE THESE UP AND DISCUSS THEM.

23 THE FIRST, AS I WAS LOOKING AT THIS, THAT IS IN
24 CONTENTION IS THIS IDEA OF THE DEFENDANTS' COUNSEL NOTIFYING
25 THE PLAINTIFFS' COUNSEL OF ANY CASE BEING FILED IN THE STATE

1 COURT WITHIN 30 DAYS OF SERVICE OF THE COMPLAINT, SOMETHING
2 THAT THE DEFENDANTS FEEL IS BURDENSOME AND THE PLAINTIFFS FEEL
3 IS NECESSARY.

4 I THINK THE DEFENDANTS' VIEW IS THAT NOTICE SHOULD
5 COME WHEN A CASE INDICATES SOME -- AND I'M PARAPHRASING; I
6 DON'T MEAN TO SOMEHOW BE INCOMPLETE -- BUT WHEN THERE IS AN
7 INDICATION OF INTEREST IN THE MDL MATERIALS, THAT SHOULD BE
8 WHERE NOTICE COMES OUT.

9 WORKING OFF OF THAT BACKDROP, I GUESS THE FIRST
10 COMMENT I HAVE IS AT PAGE 10 OF DOCUMENT 576, AT LINE 23, IT
11 TALKS ABOUT A CASE IN ANY STATE COURT WITHOUT DEFINITION.

12 SO I'M WONDERING IF WE ARE REALLY RELYING UPON THE
13 APPLICATION PARAGRAPH, AT PAGE TWO, THAT REALLY WE'RE TALKING
14 ABOUT CASES THAT ARE FILED IN OR TRANSFERRED TO OR REMOVED, OR
15 WILL BE, TO THE MDL, OR THE PLAINTIFFS ARE TRULY LOOKING AT A
16 BROAD BRUSH OF ALMOST ANY STATE COURT CASE THAT IN SOME WAY
17 DEALS WITH, I GUESS, AN INCRETIN MIMETIC IN THAT BROAD SENSE.

18 SO MAYBE FROM THE PLAINTIFFS' STANDPOINT, YOU-ALL CAN
19 GIVE ME YOUR VISION OF HOW BROAD THAT SCOPE OR THAT PARAGRAPH
20 WAS INTENDED TO BE.

21 **MR. PLATTENBERGER:** SURE, YOUR HONOR. GOOD
22 AFTERNOON. THIS IS JACOB PLATTENBERGER ON BEHALF OF THE
23 PLAINTIFFS' STEERING COMMITTEE. I AM GOING TO BE TAKING THE
24 LEAD ON THIS ISSUE. WHAT I HAVE TO SAY MAY BE SUPPLEMENTED BY
25 HUNTER SHKOLNIK, WHO HAS ALSO BEEN WORKING WITH ME, ALONG WITH

1 THE DEFENDANTS ON THIS ISSUE.

2 WHAT WE HAVE AGREED TO WITH THE DEFENDANTS IN TERMS
3 OF THE SCOPE OF THIS, IS THAT THEY WOULD HAVE TO NOTIFY US OF
4 ANY STATE COURT FILING OUTSIDE OF THE COORDINATED STATE COURT
5 PROCEEDINGS IN THE JCCP.

6 SO THAT'S THE AGREED-UPON SCOPE. AND WHAT'S AT ISSUE
7 IS THE TIMING OF THE NOTIFICATION. SO TO ANSWER YOUR QUESTION
8 DIRECTLY, THE PSC IS ASKING THAT WE BE NOTIFIED 30 DAYS AFTER
9 THE TIME OF SERVICE OF THE COMPLAINT OF A STATE COURT CASE THAT
10 IS FILED, OTHER THAN ONE THAT IS FILED IN THE STATE COURT
11 PROCEEDINGS IN THE CALIFORNIA JCCP.

12 **THE COURT:** BUT THAT STATE COURT CASE WOULD, I WOULD
13 THINK, BE A STATE COURT CASE AGAINST ONE OR MORE OF THESE
14 DEFENDANTS, AND CERTAINLY ONE OR MORE OF THEIR INCRETIN
15 MIMETICS, WITH AN ALLEGATION OF PANCREATIC CANCER AS BEING THE
16 HARM -- THE ALLEGED HARM, RIGHT?

17 **MR. PLATTENBERGER:** THAT IS CORRECT, YOUR HONOR. IT
18 WOULD BE A PRODUCTS LIABILITY LAWSUIT WHERE THE ALLEGED INJURY
19 IS PANCREATIC CANCER.

20 **THE COURT:** OKAY. SO THANK YOU, MR. PLATTENBERGER,
21 FOR THAT CLARIFICATION.

22 AND WHEN I READ THIS THE FIRST TIME, OF COURSE, AS
23 BEING AN AGREED DOCUMENT, I GUESS I DIDN'T PICK IT APART LIKE I
24 HAVE DONE IN THE LAST WEEK OR SO. SO NOW I'M GETTING A LITTLE
25 HYPER-TECHNICAL. BUT IT SOUNDS LIKE -- AND I WILL ASK THE

1 DEFENSE, NOW TO COMMENT -- WE'RE ALL ON THE SAME PAGE AS TO
2 WHAT THE SCOPE WOULD BE?

3 AND SO WHO ON THE DEFENSE SIDE WANTS TO ADDRESS THAT?

4 **MR. KING:** IT'S KEN KING FOR THE DEFENDANTS, YOUR
5 HONOR.

6 **THE COURT:** OKAY.

7 **MR. KING:** MR. PLATTENBERGER IS RIGHT. THE SCOPE
8 WOULD BE CASES OUTSIDE -- STATE CASES OUTSIDE THE JCCP.

9 **THE COURT:** RIGHT. WELL, IS IT MERELY THE QUESTION
10 OF 30 DAYS VERSUS SOME OTHER AVENUE, SOME OTHER INTERVAL?
11 BECAUSE I SENSE THAT THERE WAS A DIFFERENT TRIGGERING MECHANISM
12 THE DEFENSE WAS DESIRING BEYOND JUST FILING. AND SO MAYBE I
13 OVER-ASSUMED YOUR POSITION.

14 **MR. KING:** THAT IS CORRECT, YOUR HONOR. BECAUSE
15 THEIR INTEREST IS NOT TRIGGERED UNTIL THEIR PSC WORK PRODUCT IS
16 GOING TO BE USED IN A GIVEN CASE.

17 **THE COURT:** OKAY. BUT THE TRIGGER FOR THAT -- AND
18 I'M SCRATCHING MY HEAD AT THE MOMENT TRYING TO FIND MY NOTICE
19 TO WHAT WAS SPECIFICALLY REFERENCED THERE -- BUT THE TRIGGER
20 WAS SOMETHING LIKE IT BECOMES OF INTEREST OR SOMETHING, WHICH
21 IS A VERY DIFFICULT TERM TO WORK WITH OR, ULTIMATELY, TO
22 ENFORCE. SO IT'S SOMEWHAT OF A BLACK HOLE TO SOME DEGREE.

23 SO WOULDN'T IT BE SIMPLE TO SHOOT AN E-MAIL TO THE
24 LIAISON GROUP OR, PERHAPS, A DESIGNATE, SAYING, WELL, IN
25 MISSISSIPPI WE HAVE A CASE OF THE TYPE THAT WE CONTEMPLATE, AND

1 HERE IS THE CASE NUMBER?

2 WHAT IS SO BURDENSOME ABOUT THAT?

3 **MR. KING:** I DON'T THINK IT'S A QUESTION OF BURDEN
4 BECAUSE, YOU'RE RIGHT, WE COULD SHOOT THEM AN E-MAIL. OF
5 COURSE, RIGHT NOW, WE HAVE ONLY A HANDFUL OF STATE CASES
6 OUTSIDE THE JCCP. WHO KNOWS HOW MANY MORE THERE WILL BE.

7 BUT IT'S REALLY A QUESTION OF WHEN THEIR INTERESTS
8 ARE AT PLAY. THE PLAINTIFFS' COUNSEL IN A GIVEN CASE ARE
9 CERTAINLY CAPABLE OF CONTACTING THE PSC FOR THEIR MATERIAL, IF
10 THEY WANT TO AND IF THEY CHOOSE TO, WITHOUT THE PSC HAVING TO
11 INSERT THEMSELVES.

12 AND I REALIZE THE LANGUAGE THAT YOUR HONOR QUOTED MAY
13 WELL REQUIRE MORE CLARITY, AND WE CAN DO THAT, BUT WHEN
14 PLAINTIFFS ASK FOR MATERIAL OR WHEN THE DEFENDANTS OFFER IT OR
15 WHEN THE PSC PROVIDES IT.

16 **THE COURT:** OKAY. WELL, THANK YOU FOR CLARIFYING,
17 MR. KING.

18 AND BACK TO THE PLAINTIFFS' SIDE, MR. PLATTENBERGER.
19 IF WE TIGHTENED UP THE LANGUAGE SOME, TO BE AS MR. KING WAS
20 REFLECTING ON THERE, WOULDN'T THAT WORK EQUALLY WELL?

21 **MR. PLATTENBERGER:** RESPECTFULLY, YOUR HONOR, I DON'T
22 THINK THAT IT WOULD. AND ALL THAT THE PLAINTIFFS' STEERING
23 COMMITTEE IS ASKING FOR HERE IS THAT THE DEFENDANTS PROVIDE
24 INFORMATION TO US THAT THEY ALREADY HAVE. AND I WOULD BE MORE
25 THAN HAPPY TO ARTICULATE WHY WE THINK THIS IS IMPORTANT, BUT

1 THIS IS SOMETHING THAT THE DEFENDANTS ARE ALREADY DOING,
2 NECESSARILY. THEY ARE AWARE OF EVERY COMPLAINT THAT IS SERVED
3 UPON THEM IN -- WELL, PROBABLY WORLDWIDE, BUT WE'RE ONLY
4 CONCERNED WITH THE UNITED STATES. THIS IS INFORMATION THAT
5 THEY COULD PROVIDE TO YOUR HONOR BEFORE THE END OF MY ARGUMENT
6 HERE.

7 SO WHAT WE'RE ASKING FOR IS AN OBJECTIVE, A VERY
8 CLEAR-CUT TIME FOR WHEN THEY HAVE TO LET US KNOW ABOUT A CASE
9 THAT THEY HAVE BEEN SERVED WITH.

10 AND THIS IS TYPICALLY HOW THIS IS DOWN. AND WHAT THE
11 DEFENDANTS ARE ASKING FOR IS A SUBJECTIVE, AMBIGUOUS KIND OF
12 MOVING TARGET. AND I THINK THAT THEIR PREMISE IS FLAWED. THEY
13 STATE IN THEIR PAPERS -- AND MR. KING JUST STATED -- THAT
14 PLAINTIFFS' COUNSEL, WHEN THE CASE IS FILED, AS YOUR HONOR SAID
15 IN MISSOURI OR ANY OTHER STATE COURT VENUE, IS CAPABLE OF
16 CONTACTING US AND INITIATING THIS KIND OF AMBIGUOUS,
17 ASKING-FOR-WORK-PRODUCT STANDARD THAT THE DEFENDANTS ARE ASKING
18 FOR. AND THAT'S NOT ALWAYS THE CASE.

19 THERE ARE CASES THAT ARE FILED BY PLAINTIFFS' LAWYERS
20 IN STATE COURT, PRODUCTS LIABILITY CASES, AND THEY ARE NEVER
21 AWARE THAT THERE IS AN MDL OR WHAT AN MDL IS OR THAT THEY CAN
22 HAVE ACCESS TO THIS WORK PRODUCT IF THEY'D LIKE. SO, AGAIN,
23 THE BURDEN IS NOT EXISTENT, BECAUSE THE DEFENDANTS ARE ALREADY
24 DOING THIS. AND WE ARE JUST SIMPLY ASKING THAT THEY PROVIDE US
25 THIS INFORMATION THAT THEY ALREADY HAVE. IT'S A SIMPLE E-MAIL

1 OR A SIMPLE LETTER.

2 AND AGAIN, WHAT WE'RE PROPOSING IS A VERY CLEAR-CUT,
3 VERY UNAMBIGUOUS TRIGGERING EVENT. AND WHAT THEY ARE PROPOSING
4 IS SUBJECTIVE. I DON'T KNOW WHO DETERMINES WHAT WORK PRODUCT
5 IS OR WHEN THE WORK PRODUCT IS REQUESTED, ETC. AND AGAIN,
6 THERE MAY BE SITUATIONS WHERE PLAINTIFFS' COUNSEL IN THE STATE
7 COURT FILINGS ARE NOT EVEN AWARE THAT THEY CAN MAKE THAT
8 REQUEST.

9 **THE COURT:** AND THE WAY YOU HAVE IT -- YOU, THE
10 PLAINTIFFS' GROUP -- HAVE IT HERE IS YOU WOULD ACTUALLY BE THE
11 ONE REACHING OUT TO THE NEW PLAINTIFF LAWYER ON THE HORIZON TO
12 OFFER THEM THE OPPORTUNITY TO BRING THEM INTO THE FOLD, SO TO
13 SPEAK, SO YOU WOULD BE TAKING ON AN AFFIRMATIVE INITIATIVE.

14 **MR. PLATTENBERGER:** THAT IS ABSOLUTELY CORRECT, YOUR
15 HONOR. WE WOULD REACH OUT TO THE PLAINTIFFS' LAWYER AND ADVISE
16 THEM AS TO WHAT'S GOING ON, AND THAT THE MDL EXISTS, AND WHAT
17 IT IS, AND THAT THERE IS THIS INFORMATION THAT THEY CAN ACCESS
18 IF THEY WOULD LIKE. AND THAT WOULD LEAD TO INCREASED
19 EFFICIENCY, AND NON-DUPLICATIVE DISCOVERY REQUESTS, OF COURSE,
20 WOULD ALSO BENEFIT THE DEFENDANT. SO IN TERMS OF REACHING OUT
21 TO THE PLAINTIFFS' LAWYER AND COORDINATING ALL OF THIS WITH
22 THEM, THAT WOULD CERTAINLY BE THE PSC'S RESPONSIBILITY.

23 **THE COURT:** AND, MR. KING, ANYTHING ELSE YOU WOULD
24 LIKE TO ADD ON YOUR GROUP'S SIDE OF THIS ISSUE?

25 **MR. KING:** FIRST, I THINK IT'S HARD TO IMAGINE THAT

1 ANY PLAINTIFFS' LAWYER FILING ONE OF THESE CASES WOULD NOT KNOW
2 ABOUT THE MDL.

3 AND SECOND, IF THERE COMES A TIME WHEN, AGAIN, THE
4 PLAINTIFFS' LAWYER SAYS THEY WANT TO DEPOSE A COMPANY WITNESS,
5 FOR EXAMPLE, WE WOULD BE COMPELLED TO SAY THAT THAT WITNESS HAS
6 BEEN DEPOSED IN THE MDL AND THAT WOULD CERTAINLY TRIGGER THE
7 OBLIGATION THAT MR. PLATTENBERGER IS TALKING ABOUT.

8 **THE COURT:** OKAY. WELL --

9 **MR. SHKOLNIK:** YOUR HONOR, THIS IS HUNTER SHKOLNIK.
10 CAN I JUST ADD ONE POINT?

11 **THE COURT:** MR. SHKOLNIK, GO AHEAD. SORRY. I DIDN'T
12 MEAN TO CUT YOU OFF.

13 **MR. SHKOLNIK:** THANK YOU. THE ONE SITUATION THAT
14 HASN'T BEEN DISCUSSED, WHICH I THINK IS AN UNFORTUNATE ONE AND
15 IT HAS NOTHING TO DO WITH THE DEFENDANT OR ANY OF THE
16 PLAINTIFFS BEFORE YOU OR BEFORE JUDGE HIGHBERGER, IS THE
17 REALITY THAT THERE ARE LAWYERS AROUND THE COUNTRY WHO DO OBTAIN
18 THE WORK BY WHATEVER MEANS -- COPIES OF WORK PRODUCT, MDL WORK
19 PRODUCT -- CHOOSE TO USE IT AND CHOOSE NOT TO TELL LEAD COUNSEL
20 IN THE MDL OR LEAD COUNSEL IN THE JCCP THAT THEY ACTUALLY HAVE
21 THE MATERIAL -- WHETHER IT'S THE NAME OF AN EXPERT WHO THEY
22 THEN TRY TO OBTAIN PRIVATELY -- BECAUSE THEY WANT TO AVOID
23 PAYING THE COMMON BENEFIT DOWN THE ROAD.

24 PLAINTIFFS' LEAD COUNSEL HERE CAN'T KNOW WHO ALL
25 THESE PEOPLE ARE. WHAT WE CAN DO IS IF THE DEFENDANTS GIVE US

1 THAT LIST -- AND IF THE 30 DAYS IS TOO MUCH, IF THEY WANT TO DO
2 IT QUARTERLY, I THINK WE CAN LIVE WITH THAT. THAT WOULD WORK,
3 TOO, IT WOULD LESSEN THE BURDEN. IF THEY WOULD GIVE US THE
4 LIST OF ALL THE CASES AND ALL THE LAWYERS, WE CAN CONTINUOUSLY
5 REACH OUT TO THEM AND SAY WE'RE HERE TO HELP, IF YOU ARE
6 UTILIZING A WORK PRODUCT, THE BENEFIT DOES IT, AND WHAT IT MAY
7 COST YOU DOWN THE ROAD.

8 AND IT ALLOWS FOR TRANSPARENCY, WHICH WE DON'T HAVE
9 AND WE CAN'T HAVE. AND TO LEAVE IT TO THAT POINT IN TIME WHERE
10 A PLAINTIFF IN SOME HINTERLAND DECIDES TO ASK FOR SOMETHING
11 AFFIRMATIVELY IS OVERLOOKING THE WHOLE PURPOSE OF THE COMMON
12 BENEFIT DOCTRINE AND WHY THESE TYPES OF ORDERS ARE NECESSARY.
13 BECAUSE, UNFORTUNATELY, LAWYERS WILL BE HAPPY TO TAKE THE WORK
14 PRODUCT BUT NOT COMPENSATE FOR IT. AND THIS IS A WAY -- A
15 REASONABLE WAY TO MAKE SURE THAT DOESN'T HAPPEN.

16 **MS. LEVINE:** YOUR HONOR --

17 **THE COURT:** GO AHEAD.

18 **MS. LEVINE:** THIS IS HEIDI LEVINE ON BEHALF OF
19 DEFENDANTS, AS WELL. I REPRESENT NOVO NORDISK. I JUST WANTED
20 TO ADD THAT THERE IS TRANSPARENCY. AND I WANT TO BE CLEAR THAT
21 THE DEFENDANTS ARE NOT TRYING TO HIDE THE BALL OR PREVENT THE
22 PSC FROM SPEAKING WITH THEIR CONSTITUENTS. THE ISSUE IS THE
23 TIMING. AND I DON'T THINK DEFENDANTS HAVE A PROBLEM WITH
24 HAVING A CONCRETE MARKER FOR BEGINNING THAT CONVERSATION. BUT
25 THE REALITY IS SOME OF THESE CASES GET FILED FOR STATUTE OF

1 LIMITATION PURPOSES, DON'T GET SERVED FOR A YEAR OR MORE. THEY
2 HAVE ABSOLUTELY NO ACTIVITY. THERE IS NO JUDGE OR COURT ORDER.
3 AND THERE IS NO LEGITIMATE INTEREST THAT THE PSC COULD HAVE IN
4 SPEAKING WITH THAT COUNSEL, OTHER THAN POTENTIAL FORUM-SHOPPING
5 OR GETTING THEM INVOLVED IN STATE ACTIONS THAT MIGHT HAVE
6 PURPOSES OTHER THAN GOING ALONG WITH THE MDL IN THE JCCP.

7 SO IF THE MARKER IS AN ENTRY OF A DISCOVERY SCHEDULE
8 OR INITIATION OF A CASE STATUS CONFERENCE, SOMETHING THAT IS
9 CONCRETE, THAT SATISFIES THE PLAINTIFFS' LEGITIMATE CONCERNS
10 ABOUT AN AMBIGUOUS STATE, BUT THAT ALLOWS US TO LEAVE -- I
11 MEAN, IF A CASE IS JUST OUT THERE WITH NO ACTIVITY, THERE IS
12 JUST NO LEGITIMATE INTEREST THE PLAINTIFFS COULD HAVE.

13 AND TO BE SURE, THERE IS, AS KEN SAID, KEN KING,
14 THERE CAN'T BE A PLAINTIFFS' LAWYER THAT DOESN'T UNDERSTAND
15 THAT THERE IS AN MDL GOING ON. ALL YOU HAVE TO GOOGLE IS GLP-1
16 OR INCRETIN OR ANY OF OUR PRODUCTS AND IT COMES UP AS THE FIRST
17 THING. AND WE DO HAVE CONVERSATIONS WITH INDIVIDUAL
18 PLAINTIFFS' LAWYERS WHO HAVE CASES. AND WE DO ENCOURAGE THEM
19 TO TALK TO THE PSC. WHAT WE WANT TO AVOID IS AN OBLIGATION TO
20 DO SO THE SECOND THERE MAY BE A CASE FILING.

21 WE DON'T EVEN ALWAYS KNOW THAT A CASE IS FILED UNLESS
22 WE'RE SERVED. AND SOME COURTS HAVE ELECTRONIC FILINGS AND SOME
23 DON'T. AND WE JUST WANT TO MAKE SURE THAT THE BURDEN IS FAIR
24 AND THAT IT'S FOR THE RIGHT REASONS.

25 **THE COURT:** WELL, I THINK BOTH OF YOU, BOTH SIDES,

1 CERTAINLY HAVE LEGITIMATE CONCERNS AND ISSUES. AND I THINK IN
2 BALANCING THOSE MY PREFERENCE WOULD BE THAT WE AMEND THE ORDER.
3 WE'RE LOOKING AT ITEM B3 ON PAGE TEN. AND I THINK WE NEED A
4 FINITE EVENT, SOMETHING THAT IS A NOT SUBJECT TO INTERPRETATION
5 OR DISPUTE. AND THAT IS NOT AN ASPERSION DIRECTED AT ANYONE IN
6 THIS GROUP, BY ANY MEANS. IT'S JUST TROUBLESHOOTING IT TO THE
7 POINT THAT WE HAVE SOMETHING EASY TO WORK WITH, EASY TO
8 ENFORCE, EASY TO ADJUDICATE, IF WE HAVE TO.

9 SO I WOULD THINK THAT 90 DAYS FROM THE DATE OF
10 SERVICE OF ANY CASE BEING FILED IN STATE COURT, UNLESS THE
11 MATTER IS FIRST, BEFORE THAT DATE, TRANSFERRED TO OR REMOVED TO
12 THE MDL OR THE JCCP, WOULD BE A VERY WORKABLE TRIGGER,
13 GUIDELINE, OR WHATNOT.

14 IT WOULDN'T UNNECESSARILY DELAY THE PLAINTIFFS FROM
15 UNDERSTANDING SOMEONE IS GOING TO BE COMING ABOARD, IN A GLOBAL
16 SENSE, THAT MAY BENEFIT FROM AND OUGHT TO CERTAINLY PAY FOR THE
17 MATERIAL AND THE HARD WORK THAT HAS BEEN DEVOTED. I THINK IT
18 ADDRESSES MANY OF MS. LEVINE'S CONCERNS ABOUT THESE CASES LYING
19 IN THE WEEDS AND A LACK OF TRUE KNOWLEDGE UNTIL THERE IS THE
20 TRIGGER. AND I WOULD LIKE SERVICE BETTER THAN DISCOVERY
21 REQUESTS OR SOMETHING ELSE BECAUSE THERE HAS GOT TO BE MORE
22 THAN JUST A FEW OF YOU WORKING ON THESE CASES, AND I WOULD NOT
23 WANT TO LEAVE ANYTHING TO INTERPRETATION.

24 SO I WILL RESOLVE IT IN THAT FASHION AND ASK THE
25 PLAINTIFFS TO SUBMIT A REVISION TO THE ORDER WITH THAT CONCEPT

1 IN IT, UPON BEING SERVED WITH A CASE IN ANY STATE COURT. IT
2 MIGHT BE GOOD SINCE WE ARE DOING THAT TO INDICATE INVOLVING
3 PANCREATIC CANCER DUE TO THE USE OF INCRETIN MIMETICS BY THE
4 DEFENDANTS IN THE MDL, JUST SO THERE IS NO QUESTION. AND THAT
5 A NOTIFICATION BY E-MAIL TO THE PSC MEMBERS SHOULD BE SPECIFIED
6 SO THERE IS NO QUESTION AS TO THE MANNER. AND WE'LL MAKE IT A
7 90-DAY WINDOW SO THAT IF A DEFENDANT IS REMOVED OR IN SOME
8 OTHER MECHANISM TRANSFERRED, THAT JUST SAVES THEM THE NEED TO
9 DO THAT. IT'S EFFECTIVELY THE SAME THING OR SERVES THE SAME
10 PURPOSES.

11 SO THAT IS HOW I WOULD RESOLVE YOUR DISPUTE. AND I'M
12 NOT SURE WHICH OF YOU ON THE PLAINTIFFS' SIDE HAS THE TEMPLATE
13 FOR THIS, BUT I WOULD ASK YOU FOLKS TO SUBMIT A REVISED ORDER
14 WITH THAT IN MIND.

15 NOW, I'M CERTAINLY GOING TO LEAVE TO JUDGE HIGHBERGER
16 ANY ALTERATIONS HE WANTS IN HIS COURT ON WHATEVER YOU
17 ULTIMATELY PRESENT TO HIM, BUT FOR MY PURPOSES AND CONSIDERING
18 WHAT I MIGHT HAVE TO DO IN ENFORCEMENT OR ADJUDICATION LATER
19 ON, THIS IS HOW I WOULD LIKE TO HAVE IT.

20 **MR. SHKOLNIK:** THANK YOU, YOUR HONOR.

21 **JUDGE HIGHBERGER:** THIS IS JUDGE HIGHBERGER. I DON'T
22 HAVE THE DOCUMENT IN FRONT OF ME SO I FOLLOWED THE DISCUSSION
23 AS BEST AS I CAN. BUT AT LEAST IN CONCEPT, THE REVISED FORM OF
24 ORDER SUGGESTED BY JUDGE BATTAGLIA SOUNDS PERFECTLY SUITABLE TO
25 ME, SO I'M AMENABLE TO LOOKING AT SUCH A THING.

1 **MR. PLATTENBERGER:** THANK YOU, YOUR HONOR. THIS IS
2 JACOB PLATTENBERGER FOR THE PSC, AND I WILL TAKE CARE OF THE
3 CHANGES TO THE MDL DOCUMENT.

4 **THE COURT:** OKAY. YES. JUST CALL IT AN AMENDED CASE
5 MANAGEMENT ORDER ESTABLISHING THE COMMON BENEFIT FEES. JUST
6 PUT THE WORD "AMENDED" ON YOUR PRIOR TITLE. AND E-MAIL IT HERE
7 FOR MY SIGNATURE AND THEN FILING.

8 NOW, EARLIER WE WERE TALKING ABOUT DEFENDANTS'
9 OBLIGATIONS AS THE ESSENCE OF WHAT WE NEED TO RESOLVE HERE.

10 **MR. KING:** YOUR HONOR, IT'S KEN KING. MAY I JUST
11 INTERJECT BEFORE THIS GOES ON?

12 **THE COURT:** OF COURSE.

13 **MR. KING:** THE ORDER BEFORE YOUR HONOR -- SINCE THAT
14 TIME, THE PARTIES HAVE MET AND CONFERRED AND THERE HAVE BEEN
15 MODIFICATIONS TO THAT.

16 **THE COURT:** THEN SUBMIT A MODIFIED ONE.

17 **MR. KING:** RIGHT. WE REACHED AGREEMENT ON ALL BUT
18 THESE TWO ISSUES. SO THE MODIFIED ORDER IS REFLECTING THOSE --
19 THE RESULTS OF THOSE MEET AND CONFERS, IS WHAT WE WANT TO SAY.

20 **THE COURT:** FAIR ENOUGH, THEN. THEN THE PLAINTIFFS
21 CAN TAKE WHAT YOU OTHERWISE AGREED TO, FIX THIS PROVISION, SEND
22 IT IN ALONG WITH WHAT, IF ANYTHING, WE DO ON THE OBLIGATION TO
23 WITHHOLD MONEY, AND THEN I'LL ENTER IT.

24 SO THANKS, MR. KING. I PROBABLY SHOULD HAVE
25 ANTICIPATED THAT, BUT I WAS STORMING AHEAD HERE.

1 OKAY. ON THE OBLIGATION OF THE DEFENDANTS TO
2 WITHHOLD AN ASSESSMENT FROM THE AMOUNT PAID, AS I UNDERSTAND
3 THE MECHANISM, THE PLAINTIFFS' STEERING COMMITTEE IS GOING TO
4 SET UP A COUPLE OF ACCOUNTS. AND THE ANTICIPATION, FROM THEIR
5 VIEW, IS THAT THE DEFENSE WITHHOLD A PERCENTAGE -- TO BE
6 IDENTIFIED BY THE COURT AT SOME POINT -- FROM ANY SETTLEMENT
7 AND SEND THAT TO THE FUNDS. AND THEN, AT THAT POINT, THE PSC,
8 THE PLAINTIFFS' LAWYER, AND THE COURT WORK OUT ANYBODY'S
9 INTERESTS OR CONCERNS. SO THAT'S THE MODEL, AS I VISUALIZE IT.

10 BUT THE DEFENSE SEEMS TO SUGGEST HAVING TO DO -- AND
11 I THINK I KNOW WHY -- BUT SUGGESTS HAVING TO DO PLAINTIFFS'
12 ACCOUNTING WORK AND SO FORTH. BUT AS TO THIS ISSUE OF
13 WITHHOLDING UNDER THE COURT'S DIRECTIVE, WHICH WOULD REQUIRE --
14 LET'S USE A HYPOTHETICAL 1 PERCENT -- SENDING A CHECK FOR
15 1 PERCENT TO THE FUND AND 99 PERCENT TO THE PLAINTIFF'S LAWYER
16 AND HIS OR HER CLIENT, IS THAT REALLY A BOTHER TO THE DEFENSE?

17 **MR. KING:** WELL, ADMINISTRATIVELY, IT'S SOME BURDEN.
18 OUR POINT IS, YOUR HONOR, IS THAT THE PLAINTIFFS HAVE ADEQUATE
19 PROTECTION. THE PSC HAS ADEQUATE PROTECTION HERE BECAUSE THE
20 PSC AND THE INDIVIDUAL PLAINTIFF'S ATTORNEYS WILL HAVE SIGNED
21 THE COMMON BENEFIT AGREEMENT, THE COURT WILL HAVE ORDERED THAT
22 THE AGREEMENT BE FOLLOWED. AND WE, THE DEFENDANTS, SHOULDN'T
23 BE RESPONSIBLE TO ASSURE THAT THIS ASSESSMENT HAS BEEN PAID.

24 **THE COURT:** OKAY. BUT THERE ARE CASES CONTEMPLATED
25 BY THE PLAIN LANGUAGE OF THIS -- UNLESS YOU HAVE ALL CHANGED IT

1 IN YOUR MEET AND CONFER -- BUT THIS WOULD SEEM TO IMPLICATE
2 THOSE IN CASES WHERE THE PLAINTIFF'S LAWYER HASN'T SIGNED THE
3 PARTICIPATION AGREEMENT. IT SEEMS VERY BROAD.

4 SO DID YOU GUYS FIX THAT OR CHANGE THAT?

5 **MR. KING:** THE MEET AND CONFER HAS RESOLVED THAT,
6 YOUR HONOR.

7 **THE COURT:** OKAY. UNLESS YOU HAVE SOMETHING ELSE AT
8 THE MOMENT, MR. KING, LET ME ASK SOMEBODY ON THE PLAINTIFFS'
9 SIDE: IF WE'RE DEALING WITH THOSE THAT ARE SIGNATORIES TO THE
10 AGREEMENT, WHY ISN'T THAT GOOD ENOUGH AND WE BID THE DEFENSE
11 ADIEU AND WORK IT OUT AMONGST THE REST OF US FOLKS?

12 **MR. PLATTENBERGER:** WELL, YOUR HONOR, AGAIN, THIS IS
13 JACOB PLATTENBERGER ON BEHALF OF THE PSC. I DON'T KNOW THAT I
14 COMPLETELY AGREE WITH WHAT MR. KING SAID. I THINK THAT THE
15 COMMON BENEFIT ORDER IS SUPPOSED TO CAPTURE ALL SETTLED CASES
16 THAT THE DEFENDANTS ARE A PART OF WHERE PEOPLE HAVE UTILIZED
17 THE COMMON BENEFIT WORK PRODUCT.

18 AND WHETHER OR NOT THAT AUTOMATICALLY MEANS THAT THEY
19 HAVE SIGNED A PARTICIPATION AGREEMENT, I DON'T THINK THAT IS
20 THE CASE. AS MR. SHKOLNIK SAID PRIOR, THERE ARE GOING TO BE
21 SOME INSTANCES WHERE PLAINTIFFS' LAWYERS REFUSE TO SIGN OR
22 DECLINE TO SIGN A PARTICIPATION AGREEMENT. OF COURSE, WE CAN'T
23 FORCE ANYONE TO DO THAT. BUT WHERE IT BECOMES KNOWN TO US THAT
24 THEY HAVE, IN FACT, UTILIZED PLAINTIFFS' STEERING COMMITTEE
25 WORK PRODUCT, THIS, AGAIN, IS ANOTHER REASON WHY IT'S

1 IMPORTANT -- I THINK YOUR HONOR CORRECTLY PICKED UP ON IT --
2 THAT WE KNOW ABOUT ALL THESE PEOPLE SO THAT IF THE PLAINTIFFS
3 AREN'T GOING TO SIGN THE PARTICIPATION AGREEMENT, THAT WE ARE
4 AT LEAST ABLE TO PUT THEM ON NOTICE THAT OKAY, BUT IF YOU'RE
5 GOING TO USE OUR WORK PRODUCT, YOU ARE GOING TO BE SUBJECT TO
6 THIS ASSESSMENT.

7 THERE IS ALMOST NO BURDEN HERE TO THE DEFENDANTS.
8 AND THEY ARE, OF COURSE, IN THE BEST POSITION TO KNOW WHEN
9 CASES SETTLE, WITH WHOM THEY ARE SETTLED, AND THE AMOUNT OF
10 THOSE SETTLEMENTS. THEY ARE THE ONLY PARTY THAT HAS THAT
11 INFORMATION AT SOME POINT IN TIME. WE DON'T HAVE THAT.

12 AND SO ALL WE'RE ASKING -- AND AGAIN, THERE IS A LOT
13 OF PRECEDENT HERE TO GUIDE US. AND WE ATTACHED THAT PRECEDENT
14 TO OUR PAPERS. AND SIMPLY PUT, THIS IS JUST A FUNCTION OF HOW
15 THESE THINGS OPERATE IN REAL LIFE AND THIS IS JUST HOW IT'S
16 DONE. AGAIN, WE SENT IN 12 DIFFERENT ORDERS AND ATTACHED IT TO
17 OUR PAPERS. ALL THE DEFENDANTS HAVE TO DO, AS YOUR HONOR
18 POINTED OUT, IS MAKE AN ADDITIONAL WIRE TRANSFER AND THEN THEY
19 ARE DONE. THEY HAVE NO FURTHER OBLIGATION.

20 THIS DOES NOT IMPEDE SETTLEMENT. THIS DOES NOT
21 IMPEDE RESOLUTION OF THE CASES. AS SOON AS THEY NOTIFY US OF
22 WHAT IS GOING ON AND NOTIFY US OF THE WITHHOLDING, THEN THAT
23 PARTICULAR ISSUE, AT LEAST FOR THE SETTLEMENT, IS DONE AND OVER
24 WITH. AND AS LONG AS EVERYTHING ELSE IS COMPLETED, THE
25 DEFENDANTS ARE OUT OF THE CASE.

1 BUT THEY ARE IN THE BEST POSITION TO JUST MAKE THE
2 EXTRA WIRE TRANSFER, PUT THAT MONEY INTO THE FUND, AS OPPOSED
3 TO US HAVING TO GO AFTER THE FACT WHENEVER WE BECOME AWARE OF
4 THE SETTLEMENT, AND GO AND TRY TO DEAL WITH MANY DIFFERENT
5 PEOPLE FROM MANY DIFFERENT PLACES AND TRY TO GET THEM TO PAY
6 THE MONEY BACK INTO THE FUND.

7 AGAIN, THIS IS JUST A FUNCTION OF HOW THESE THINGS
8 ACTUALLY OPERATE IN REAL LIFE.

9 **THE COURT:** BUT THE CONCERN IS IF MONEY GETS SENT TO
10 SOME PLAINTIFF'S LAWYER WITHOUT SCRUPLES, WHO MAKES THE
11 DISTRIBUTION AND THEN BASICALLY TELLS THE PSC GO POUND SAND, OR
12 SAYS I DON'T HAVE THE MONEY ANYMORE, SORRY, I SPENT IT ON MY
13 NEW JAGUAR OR SOMETHING, TO MAKE LIGHT OF IT?

14 **MR. PLATTENBERGER:** RIGHT, RIGHT, YOUR HONOR. I'M
15 NOT TRYING TO CAST ASPERSIONS ON ANYONE BUT SOMETIMES THAT DOES
16 HAPPEN, UNFORTUNATELY. IT'S MUCH EASIER AND PRACTICAL AND
17 EFFICIENT -- AS EVIDENCED BY ALL THE ORDERS THAT WE'VE
18 ATTACHED -- TO DO THIS ON THE FRONT END THAN TO TRY TO DO IT
19 AFTER THE FACT. IT JUST MAKES IT MORE COMPLICATED AND
20 UNNECESSARILY SO. IT DOESN'T NEED TO BE THAT WAY. THERE IS NO
21 ADDED BURDEN TO THE DEFENDANTS.

22 AND YOUR HONOR IS CORRECT. SOMETIMES THINGS HAPPEN,
23 RIGHT? AND TO JUST DO IT ON THE FRONT END IS THE WAY THAT IT'S
24 DONE AND IT'S MUCH MORE EFFICIENT.

25 **THE COURT:** OKAY. AND I WILL LET THE DEFENSE RESPOND

1 TO THAT, AND THEN I WILL TELL YOU WHAT MY THOUGHTS ARE,
2 DEPENDING UPON THE FINAL INFORMATION THAT THE DEFENSE PROVIDES.

3 **MR. KING:** WELL, IT ALSO, YOUR HONOR, POTENTIALLY
4 EMBROILS THE DEFENDANTS IN A DISPUTE BETWEEN TWO CONTRACTED
5 PARTIES AND WE'RE NOT A PARTY. WE'RE A THIRD PARTY, YOUR
6 HONOR.

7 AND ON THE ISSUE OF THE MODIFICATIONS TO THE
8 AGREEMENT THAT WE MET AND CONFERRED ABOUT, THE UNIVERSE IS THE
9 PLAINTIFFS WHO SIGN THE PARTICIPATION AGREEMENT. THE
10 PLAINTIFFS, THE PSC KNOWS WHO THOSE PLAINTIFFS ARE. THE OTHER
11 ORDERS THAT THEY ATTACHED, THERE ARE DIFFERENT CIRCUMSTANCES IN
12 THOSE ORDERS, INCLUDING CIRCUMSTANCES WHERE THE DEFENDANT, BUT
13 NOT THE PSC, WOULD KNOW THE IDENTITIES OF PLAINTIFFS OBLIGATED
14 TO PAY THE ASSESSMENT.

15 AND WE CITED ANOTHER ORDER, MDL ORDER, *IN RE ZYPREXA*,
16 WHERE THE DEFENDANTS WERE NOT OBLIGATED TO WITHHOLD THAT
17 ASSESSMENT.

18 **THE COURT:** AND REMIND ME ABOUT THAT. WAS IT A
19 NARROWER UNIVERSE, MUCH LIKE THIS, WHERE IT WAS ALL SIGNATORIES
20 TO THE PARTICIPATION AGREEMENT?

21 **MR. PLATTENBERGER:** WELL, YOUR HONOR, I BELIEVE THAT
22 THOSE ORDERS, ALTHOUGH I'M NOT POSITIVE, WERE ENTERED INTO
23 AFTER THE SETTLEMENT HAD ALREADY BEEN AGREED TO. IT'S REALLY
24 KIND OF A ONE-OFF SITUATION, WHICH IS WHY WE WERE ABLE TO
25 ATTACH 12 ORDERS EVIDENCING THE COUNTY BENEFIT FUND THAT WE

1 PROPOSED. AND THE DEFENDANTS WERE ONLY ABLE TO CITE TO ONE, I
2 BELIEVE, BECAUSE IT WAS A ONE-OFF-TYPE SITUATION.

3 **MR. KING:** WELL, IT WAS A SITUATION IN WHICH THE
4 DEFENDANT KNEW WHO THE PARTICIPATION AGREEMENT SIGNEES WERE.

5 **THE COURT:** OKAY. I GUESS I AM A LITTLE AT A
6 DISADVANTAGE, NOT HAVING IT IN FRONT OF ME. MAYBE I DO, AND I
7 JUST DON'T KNOW IT, YOUR MEET AND CONFER REVISIONS. BECAUSE I
8 AM ALSO ASSUMING THAT FOR OUR PURPOSES OF THIS DISCUSSION,
9 WE'RE TALKING ABOUT FOR THE MDL -- CASES WITHIN THE MDL AND NOT
10 ONE OF THESE CASES WE TALKED ABOUT THAT MIGHT BE IN SOME OTHER
11 STATE COURT WHERE NOTICE WOULD OTHERWISE BE GIVEN.

12 WOULD THAT BE A FAIR STATEMENT, MR. PLATTENBERGER?

13 **MR. PLATTENBERGER:** YOUR HONOR, FOR PURPOSES OF THIS
14 ARGUMENT, WE'RE SEEKING TO HAVE THE DEFENDANTS BOUND BY YOUR
15 ORDER IN THIS COURT TO WITHHOLD FROM ANY CASE THAT UTILIZES
16 PLAINTIFFS' STEERING COMMITTEE WORK PRODUCT.

17 **THE COURT:** OKAY.

18 **MR. PLATTENBERGER:** AND THE CASE POINT -- I'M SORRY,
19 YOUR HONOR.

20 **THE COURT:** NO, YOU GO AHEAD.

21 **MR. PLATTENBERGER:** TO MR. KING'S POINT, IT WOULD NOT
22 BLUR WITH THE CONTROVERSY BECAUSE THEY WOULD BE ABLE TO SIMPLY
23 SAY WE ARE BOUND BY THIS ORDER, AND WE ARE FOLLOWING A COURT
24 ORDER TO WITHHOLD THESE FUNDS.

25 **THE COURT:** BUT HOW WOULD I HAVE, NECESSARILY,

1 JURISDICTION OVER SOME STATE COURT CASE -- WE'RE LOOKING OUT
2 INTO EVERYTHING EAST OF CALIFORNIA HERE -- HOW DO I HAVE
3 JURISDICTION TO ORDER NON-SIGNATORY -- WELL, I GUESS IT IS THE
4 SIGNATORY OF THE PARTICIPATION. BUT UNLESS I HAVE INDEPENDENT
5 JURISDICTION, YOU CAN'T CONFER JURISDICTION UPON THE COURT BY
6 AGREEMENT. IT HAS TO OTHERWISE STAND ON APPROPRIATE GROUNDS
7 JURISPRUDENTIALLY. SO I AM A LITTLE TROUBLED BY THE
8 WITHHOLDING ASPECT FROM THAT STANDPOINT.

9 I CAN SEE THE NOTICE PROVISION, CERTAINLY. I THINK
10 THAT THE DEFENDANTS WILL KNOW WHEN THEY SETTLED AND THEY CAN
11 SHOOT THE PSC A NOTE SAYING WE'RE SETTLING WITH JOHN DOE IN
12 SOME OTHER LOCALE. AND THAT'S A CONCERN.

13 HERE IS WHAT I WANT TO DO ON THAT, IN THE INTEREST OF
14 TIME. I KNOW WE GOT A LATE START AND FOR SOME OF YOU IT'S
15 GETTING QUITE INTO THE EVENING. SUBMIT TO ME THE MEET AND
16 CONFER ORDER WITH THE CHANGE WE MADE, OR I ORDERED, ON THE
17 NOTICE PROVISION, AND I WILL TAKE THE MATTER UNDER SUBMISSION
18 AND REVISE AS I DETERMINE APPROPRIATE, AND THEN FILE THAT IN
19 THE CASE.

20 I THINK THAT IS SUFFICIENT BECAUSE I WOULD JUST LIKE
21 TO REFLECT ON THE EXACT LANGUAGE THAT YOU HAVE COME TO, AND HOW
22 WE CHANGE OR VARY ON THIS PARTICULAR POINT. SO LET'S DO THAT.
23 I THINK THAT WAY WE CAN MOVE ON TO SOME OF THE QUESTIONS WE
24 HAVE ON THE REMAND ISSUES, AND GET YOU FOLKS BACK OUT TO
25 HANGING HOLIDAY LIGHTS OR BUYING HOLIDAY GIFTS.

1 **MR. KING:** YOUR HONOR, WE DID SUBMIT A REDLINE IN OUR
2 PAPERS, BUT WE WILL WORK WITH PLAINTIFFS TO SUBMIT A FRESH
3 REDLINE.

4 **THE COURT:** MY CLERK AND I ARE SCRATCHING OUR HEADS,
5 SO IT PROBABLY IS HERE. WE MIGHT NEED A REFRESHER, I THINK.
6 SO LET'S DO THAT.

7 LET'S MOVE TO THE REMAND ISSUE, WHICH INVOLVES THE
8 ONE, TWO, THREE, FOUR, FIVE CASES THAT WERE HERE AND WENT TO
9 THE STATE COURT OR BACK NOW, AND WE HAVE THE ISSUE OF RELATIVE
10 TO CAFA. AND I UNDERSTAND THE RECENT AUTHORITY. IT'S PRETTY
11 PLAIN AND CLEAR WHAT IT SAYS, BUT LET ME ASK SOME PRACTICAL
12 QUESTIONS THAT WILL HELP ME ASSESS HOW TO APPLY THE LAW HERE.

13 I MEAN, THE FIRST QUESTION TO THE PLAINTIFFS. THE
14 REPLY BRIEF FOR YOU-ALL SUGGESTS THAT UPON RETURN, THESE FIVE
15 CASES WOULD NOT BE INCLUDED IN THE JCCP. SO IF THAT IS THE
16 CASE, WHERE ARE THEY GOING, HOW ARE THEY GOING TO BE HANDLED,
17 AND ISN'T THAT GOING TO BRING THE RISK OF INCONSISTENT RULINGS
18 OF THINGS HANDLED OUTSIDE THE JCCP OR THE MDL VERY PRESENT AND
19 OF CONCERN?

20 **MR. SHKOLNIK:** YOUR HONOR, THIS IS HUNTER SHKOLNIK
21 AND I CAN ADDRESS THAT. YOUR HONOR, FIRST -- FIRSTLY AND MOST
22 IMPORTANTLY, THESE CASES ARE BEING HANDLED BY MYSELF, CO-LEAD
23 COUNSEL, AND RYAN THOMPSON, CO-LEAD COUNSEL. WHAT WE HAVE SEEN
24 TO DATE IS THAT THE DEFENDANTS HAVE BEEN SEEKING TO CONSOLIDATE
25 THESE CASES IN THE JCCP. THE ISSUE THAT WE'RE DEALING WITH

1 SINCE ROMO, AND THAT THE DEFENDANTS ARE RELYING ON, IS WHERE
2 THE PLAINTIFF SEEKS TO CONSOLIDATE BEFORE THE JCCP AND SEEKS IT
3 FOR ALL PURPOSES. WE'RE NOT GOING TO TAKE A POSITION AGAINST
4 THE CASE GOING TO THE JCCP. WE KNOW THE DEFENDANTS HAVE FILED
5 FOR IT. WE KNOW THE DEFENDANTS WANT THESE CASES THERE. SO BE
6 IT.

7 SECONDLY, AND TO ANSWER YOUR QUESTION, WE WILL HONOR
8 AND WE WILL RESPECT THE DECISIONS OF THIS COURT AND JUDGE
9 HIGHBERGER AS BEING THE COURTS THAT ARE ISSUING THE PRIMARY
10 DECISIONS AS TO DISCOVERY, AS TO HOW THE CASES PROCEED.

11 SO IT'S REALLY NOT GOING TO COMPLICATE THINGS, AND
12 IT'S NOT GOING TO CAUSE DUPLICATIVE EFFORTS. THE REALITY IS
13 THESE CASES ARE GOING TO END UP BEFORE JUDGE HIGHBERGER IF THE
14 DEFENDANTS CONTINUE TO SEEK THAT ANGLE OF CONSOLIDATION. I'M
15 NOT SCARED WHAT WORDS I USE SINCE AT TIMES MY WORDS ARE THROWN
16 AT ME. BUT THE REALITY OF THE CASES ARE GOING TO BE IN THE
17 ABLE HANDS OF JUDGE HIGHBERGER WHILE THEY ARE IN THE STATE
18 COURT SYSTEM.

19 **THE COURT:** WELL, THE REASON I ASKED THE QUESTION --
20 AND I APPRECIATE YOUR COMMENTS, MR. SHKOLNIK -- IS THAT PRIOR
21 TO ROMO THE PLAINTIFFS THEMSELVES HAVE FILED THE ADD-ON
22 PETITIONS OR ATTEMPTED TO FILE ADD-ON PETITIONS, WHICH WE KNOW
23 FROM THE RECORD, I THINK, JUDGE HIGHBERGER RESCINDED. SO IT
24 SEEMS LIKE THE TRAIN WAS MOVING TOWARD CONSOLIDATION OR PUTTING
25 THEM ALL IN ONE AND WHATNOT. AND THEN, LIKE I SAY, THE REPLY

1 BRIEF GIVES A DIFFERENT FLAVOR AND SUGGESTS THAT JCCP HANDLING
2 WAS NOT THE COURSE. AND, YOU KNOW, I FIND ALL OF THAT
3 INCONSISTENT IN THE FIRST INSTANCE, AND TROUBLING, IN THE
4 SECOND.

5 **MR. THOMPSON:** YOUR HONOR, RYAN THOMPSON. AFTER THE
6 CASES WERE INITIALLY REMANDED TO SAN DIEGO STATE COURT, COUNSEL
7 FOR ELI LILLY FILED THE MOTIONS TO COORDINATE THOSE CASES INTO
8 THE JCCP, NOT PLAINTIFFS' COUNSEL. I THINK WHAT THE
9 MISUNDERSTANDING WAS IS THAT EARLY ON, BACK IN MAY WHEN ONLY A
10 COUPLE OF CASES WERE ON FILE, I HAD FILED A MOTION TO
11 COORDINATE THOSE CASES INTO THE JCCP. AND THEY WERE REMOVED
12 ALMOST SIMULTANEOUSLY OR WITHIN A DAY. SO THOSE MOTIONS WERE
13 MOOTED AT THAT TIME. SUBSEQUENT TO THAT, MORE THAN 100 CASES
14 WERE ON FILE.

15 WHEN THE CASES GOT REMANDED -- AND IT WAS COUNSEL FOR
16 ELI LILLY THAT FILED THE MOTION TO COORDINATE -- THEY WENT TO
17 HIGHBERGER. HE GRANTED THAT AND THEN RESCINDED IT ONCE THE
18 CASES WERE, AT THAT TIME, REMOVED AGAIN.

19 AND I THINK, AS A PRACTICAL MATTER, I AM UNAWARE OF
20 ANY CASE THAT HAS BEEN FILED IN CALIFORNIA STATE COURT WHERE
21 THE DEFENDANTS, SPECIFICALLY ELI LILLY, HASN'T QUICKLY MOVED TO
22 COORDINATE THOSE CASES INTO THE JCCP.

23 SO I THINK AS A PRACTICAL MATTER, IRRESPECTIVE OF HOW
24 IT'S DONE, THOSE CASES ARE LIKELY TO END UP IN THE JCCP BECAUSE
25 DEFENDANTS HAVE THE RIGHT TO FILE THAT MOTION AND TO COORDINATE

1 THEM. AND, OSTENSIBLY, IF IT'S IN THEIR INTEREST AND DESIRE TO
2 DO SO, THEY WILL DO THAT AS THEY HAVE DONE SINCE 2009 WHEN THE
3 JCCP WAS CREATED.

4 **THE COURT:** AND SO MOVING A STEP AHEAD -- AND I WILL
5 GIVE THE DEFENDANTS A CHANCE TO WEIGH IN IN A BIT -- BUT THE
6 NEXT QUESTION THAT COMES TO MIND, THEN, IS FOR OTHER CASES
7 COMING DOWN THE ROAD IN CALIFORNIA, IN PARTICULAR, IS THE
8 INTENTION TO BE FILING THOSE, WITH THE SAME NOT TAKING A
9 POSITION OR YIELDING TO THE WILL OF THE COURT WITH REGARD TO
10 WHETHER THOSE END UP IN THE JCCP OR NOT?

11 **MR. THOMPSON:** I AM NOT SURE EXACTLY WHAT YOU ARE
12 GETTING AT ON THAT ONE.

13 **THE COURT:** LET ME PUT IT THIS WAY. LET'S ASSUME
14 THERE ARE MORE CASES COMING THAT WOULD BE SIMILAR IN NATURE TO
15 BRIGGS, KELLY, JOHNSON, MARTINEZ AND KREIS. WOULD IT BE THE
16 PLAINTIFFS' INTENTION AT THIS POINT TO START FILING THOSE IN
17 VARIOUS CALIFORNIA STATE COURTS WITH THE INTENTION THAT THEY
18 ARE GOING TO PROCEED SEPARATELY?

19 **MR. THOMPSON:** IF YOU ARE ASKING WHETHER OR NOT THE
20 INTENTION OF PLAINTIFFS' COUNSEL IS TO CREATE A SECOND FOOTHOLD
21 FOR CALIFORNIA STATE COURT CASES, I BELIEVE THE ANSWER TO THAT
22 IS NO.

23 AND CANDIDLY, YOUR HONOR, I BELIEVE WE WOULD BE
24 UNABLE TO DO SO UNLESS THE DEFENDANTS HAVE A DESIRE FOR THAT TO
25 HAPPEN. BECAUSE THEY HAVE AN ABSOLUTE RIGHT, SINCE THE JCCP

1 WAS CREATED, TO FORCE COORDINATION OF THOSE CASES INTO THE
2 JCCP. SO I REALLY LOOK AT THE ISSUE OF WHETHER OUR CASE COULD
3 PROCEED OUTSIDE OF THE JCCP, AS A RED HERRING IN A SENSE,
4 BECAUSE THE DEFENDANTS HAVE UNILATERAL RIGHT TO KEEP THAT FROM
5 BEING THE SITUATION BECAUSE THEY CAN FORCE US THERE.

6 **THE COURT:** SO YOUR POINT, IN ESSENCE, IS THAT TO THE
7 EXTENT THAT YOU ARE IN THE JCCP, IT'S MOVING FORWARD WITH
8 COORDINATED PROCEEDINGS, BELLWETHER TRIALS, AND SO FORTH; NONE
9 OF THAT WAS AT YOUR INITIATIVE; IT'S REALLY THE DEFENSE THAT IS
10 BRINGING YOU INTO THAT POSTURE?

11 **MR. THOMPSON:** CORRECT, YOUR HONOR. THE INITIAL
12 PETITION TO CREATE A JCCP IN CALIFORNIA STATE COURT WAS DONE
13 BY -- AND I DON'T RECALL SPECIFICALLY IF IT WAS ELI LILLY OR
14 AMYLIN OR ANY OF THEM IN CONJUNCTION, BUT IT WAS FILED BY THE
15 DEFENDANTS TO CREATE THAT LITIGATION, WHICH THEN BROUGHT IN ALL
16 THE CASES TO THAT COURT.

17 SINCE THAT TIME, I AM UNAWARE OF ANY CASE THAT HAS
18 BEEN FILED IN CALIFORNIA STATE COURT THAT HASN'T GOTTEN FROM
19 THE DEFENDANTS A PETITION TO COORDINATE. AND I AM ALSO UNAWARE
20 OF ANY PETITION TO COORDINATE THAT INVOLVES THESE DRUGS AND THE
21 INJURIES THAT ARE AT ISSUE HERE THAT JUDGE HIGHBERGER HAS
22 DENIED. I CAN'T TELL YOU WITH COMPLETE CERTAINTY THAT THERE IS
23 NOT ONE. I AM SURE HE WILL CORRECT ME IF I'M WRONG, BUT MY
24 UNDERSTANDING IS THAT THAT HAS BEEN THE CASE NOW FOR NEARLY
25 FIVE YEARS, INCLUDING PANCREATITIS AND PANCREATIC CANCER CASES,

1 IN ADDITION TO THYROID CANCER CASES.

2 **JUDGE HIGHBERGER:** AND THIS IS JUDGE HIGHBERGER
3 PUTTING A WORD IN EDGEWISE. I AM NOT AWARE OF ANY CASES
4 PENDING IN ANY OTHER STATE COURT IN LOS ANGELES COUNTY OR
5 ELSEWHERE THAT HAVE ESCAPED COORDINATION. I WOULD HOPE THAT
6 THEY WOULD ALL BE BROUGHT INTO THE COORDINATED PROCEEDINGS FOR
7 ALL THE OBVIOUS REASONS.

8 **THE COURT:** OKAY. AND THEN THE LAST QUESTION FOR THE
9 PLAINTIFFS -- AGAIN, THE DEFENSE WILL GET A CHANCE TO WEIGH IN
10 HERE -- BACK ON AUGUST 7TH, IN A TRANSCRIPT FROM THAT HEARING,
11 AT PAGE SIX, LINES 1 THROUGH 17, PLAINTIFFS MADE COMMENT THAT
12 SOME OF THESE CASES MIGHT NEED, WILL NEED TO BE TRANSFERRED
13 UNDER THE DOCTRINE OF FORUM NON CONVENIENS. IS THAT STILL THE
14 CASE, THAT THERE IS A POTENTIAL SOME OF THESE ARE GOING TO BE
15 GOING TO SOME OTHER FORUM?

16 **MR. SHKOLNIK:** YOUR HONOR, I THINK THAT MAY HAVE BEEN
17 MY STATEMENT AT THE ORAL ARGUMENT. THIS IS HUNTER SHKOLNIK, SO
18 I WILL RESPOND. THE REALITY IS DEFENDANTS IN JCCP CASES
19 SOMETIMES MAKE MOTIONS TO CHANGE VENUE -- I'M SORRY -- MAKE
20 MOTIONS BASED ON FORUM NON CONVENIENS AT SOME POINT IN
21 LITIGATION. FOR THE MOST PART, I HAVE SEEN THEM DENIED. BUT I
22 HAVE SEEN ON A COUPLE OF OCCASIONS WHERE IT HAS BEEN GRANTED.
23 FOR EXAMPLE, THERE WAS RECENTLY IN ONE JCCP IN LOS ANGELES,
24 SOME CASES WERE DISMISSED FOR FORUM NON AND SENT TO OTHER
25 LOCATIONS, USUALLY TO AN MDL.

1 MY STATEMENT AT ORAL ARGUMENT TOOK THAT INTO
2 CONSIDERATION. THAT IS SOMETHING THAT MAY HAPPEN AT THE JCCP
3 AND DOES HAPPEN SOMETIMES. IT HASN'T HAPPENED, AS I UNDERSTAND
4 IT, BEFORE JUDGE HIGHBERGER IN THE PANCREATITIS CASES BECAUSE
5 HE WAS ABLE TO RESOLVE THAT LITIGATION, FOR THE MOST PART, AND
6 MOVED SOME CASES TO TRIAL, WHICH CAUSED RESOLUTION.

7 THE REALITY IS LIKE THE MDL, WHERE YOU WILL REMAND
8 CASES, OR NAMING CASES, I SHOULD SAY, THE DEFENDANTS HAVE THE
9 SAME ABILITY TO MAKE THESE MOTIONS OF FORUM NON AND MOVE THEM
10 OUT. ONCE THE DISCOVERY HAS SHOWN THAT EVERYTHING IS COMPLETE,
11 THEY WILL MOVE THEM TO OTHER LOCATIONS. THEY'LL TRY.

12 **JUDGE HIGHBERGER:** THAT IS ONLY IN THE GREAT STATE OF
13 CALIFORNIA. I CAN'T SEND SOMETHING TO ARIZONA OR PORTLAND,
14 MAINE.

15 **THE COURT:** RIGHT.

16 **MR. SHKOLNIK:** WHAT I WAS SUGGESTING WAS MOTIONS TO
17 DISMISS FOR FORUM NON --

18 **JUDGE HIGHBERGER:** WELL, THAT TYPE IS NON CONVENIENS.
19 YES, IT IS STATE COURT. THIS IS ANOTHER ISSUE.

20 **THE COURT:** OKAY.

21 **MR. SHKOLNIK:** AND THAT'S WHAT I WAS CONTEMPLATING,
22 THAT THAT MAY BE A MOTION THAT WE SEE DOWN THE ROAD, WHICH WE
23 SOMETIMES SEE IN JCCPS.

24 **THE COURT:** I TOOK THE TRANSCRIPT, I GUESS, MORE
25 LITERALLY, IN TERMS THAT THESE WERE COMING. AND YOU WERE

1 TALKING MORE IN THE HYPOTHETICAL OR THE USUAL TYPICAL SENSE.

2 **MR. SHKOLNIK:** YES, YOUR HONOR. THE HYPOTHETICAL.

3 **THE COURT:** THAT RESOLVES THAT. OKAY.

4 ANY OF THE DEFENSE WANT TO WEIGH IN ON ANY OF THESE
5 PARTICULAR QUESTIONS TO THE EXTENT YOU DISAGREE OR HAVE SOME
6 INPUT ON WHAT PLAINTIFFS' COUNSEL HAS SAID?

7 **MR. MARVIN:** YOUR HONOR, THIS IS DOUGLAS MARVIN
8 REPRESENTING MERCK. THE PLAINTIFFS WERE PERFECTLY CLEAR AT THE
9 HEARING IN AUGUST OF WHAT THEY INTENDED TO DO. THEY INDICATED
10 THAT THEY HAD FILED THE CASES IN SAN DIEGO SUPERIOR COURT
11 THERE; THAT IT WAS THEIR INTENTION TO THEN HAVE THOSE CASES
12 COORDINATED IN THE JCCP; AND THEY EXPLAINED THAT THE REASON FOR
13 THAT IS THAT THEY WANTED THOSE CASES TO BE AVAILABLE FOR TRIAL
14 THERE.

15 THAT POSITION APPARENTLY HAS CHANGED, BUT THAT WAS
16 WHAT THE FACTS WERE AT THE TIME WE REMOVED THE CASES. NOW
17 PLAINTIFFS ARE SAYING THAT THEY ARE NOT GOING TO FILE PETITIONS
18 TO HAVE THE CASES TRANSFERRED TO OR SENT TO THE JCCP. AND THE
19 OBVIOUS PURPOSE OF THAT IS TO AVOID APPLICATION OF CAFA BECAUSE
20 THEY WANT TO BE ABLE TO ARGUE THAT THE CASES ARE NOT BEING
21 PROPOSED FOR TRIAL IN THE JCCP. SO THAT IS WHY THEY ARE SAYING
22 THAT THEY NOW NO LONGER WANT TO FILE PETITIONS OR FOLLOW
23 THROUGH ON THEIR INTENT.

24 THAT'S VERY TROUBLING TO US BECAUSE WHAT IT MEANS IS
25 THAT IT SETS UP A GAME OF CHICKEN HERE, AS TO WHO IS GOING TO

1 THEN SEND THE CASES FROM THE SUPERIOR COURT IN SAN DIEGO. AND
2 WE VERY WELL COULD SAY THEN, WELL, WE DON'T WANT TO FILE THAT
3 PETITION, EITHER, EVEN THOUGH THAT'S CLEARLY WHAT THE
4 PLAINTIFFS HAVE BEEN SAYING THAT THEY WANT TO DO.

5 NOW, TURN TO THE TRIAL OF THESE CASES. WHAT I WANT
6 TO EXPLAIN -- YOU HAD ASKED THE PLAINTIFFS WHY WERE THEY FILING
7 THE MOTIONS TO REMAND. AND AS I SAID, THEY SAID THAT THEY
8 WANTED THE CASES TO BE REMANDED SO THAT THEY WOULD GO TO THE
9 JCCP FOR TRIAL.

10 FOR OUR PART, WHEN THESE CASES FIRST STARTED BEING
11 FILED, THE PLAINTIFFS CAME TO US AND SAID THAT THEY WANTED OUR
12 CONSENT TO SET UP AN MDL, AND THEY SET OUT THE REASONS FOR
13 THAT, THAT THEY WANTED TO HAVE THE CASES COORDINATED IN ONE
14 PROCEEDING; THAT THEY WANTED TO MAKE SURE THAT THERE WAS
15 UNIFORMITY IN RULINGS ON DECISIONS; AND THEY WANTED TO AVOID
16 ANY INCONSISTENCIES.

17 WELL, IT TURNS OUT THAT THE SAME PLAINTIFFS WHO MOVED
18 THE JPML FOR THE CREATION OF THE MDL ARE NOW SAYING NO, NOW WE
19 WANT TO FILE OUR CASES IN THE JCCP.

20 THE REASON WHY THAT TROUBLES US IS BECAUSE IN THE MDL
21 THE PLAINTIFFS AND THE DEFENDANTS HAVE CERTAIN RIGHTS. THERE
22 ARE THE LEXICON RIGHTS WITH RESPECT TO TRIALS BY THE DISTRICT
23 COURT JUDGE PRESIDING OVER THE MDL, WHICH REQUIRES THE CONSENT
24 OF BOTH PARTIES TO TRY CASES INVOLVING INDIVIDUALS WHO DON'T
25 RESIDE IN THE JURISDICTION.

1 AND IF CASES, THEN, ARE NOT TRIED IN THE MDL, WELL,
2 THEN THEY ARE REMANDED TO VARIOUS JURISDICTIONS. AND THE
3 JURISDICTIONS TO WHICH THEY ARE REMANDED ARE THE JURISDICTIONS
4 IN WHICH THE PLAINTIFFS RESIDE.

5 IF THE TRIALS ARE HELD IN THOSE JURISDICTIONS, THEN
6 BOTH PARTIES, DEFENDANTS AND PLAINTIFFS ALIKE, HAVE SUBPOENA
7 RIGHTS SO THAT DEFENDANTS CAN SUBPOENA DOCTORS TO COME AND
8 TESTIFY IN THOSE TRIALS, AS WELL AS OTHER WITNESSES. WE CAN'T
9 FORCE, HOWEVER, SOMEONE TO -- A DOCTOR TO TRAVEL FROM IOWA OR
10 VIRGINIA OR MAINE TO CALIFORNIA TO THE JCCP, TO GO AHEAD AND
11 TESTIFY.

12 AND SO HAVING WITNESSES WHO ARE ACCESSIBLE FOR THESE
13 KIND OF TRIALS ARE IMPORTANT RIGHTS THAT DEFENDANTS HAVE. AND
14 AS JUDGE HIGHBERGER JUST INDICATED, HE DOESN'T HAVE THE
15 CAPACITY TO SEND CASES TO A STATE COURT IN ARIZONA OR TO IOWA
16 OR TO VIRGINIA. AND SO BY KEEPING THE CASES IN THE MDL AND
17 REMOVING THE CASES TO THE MDL, NOT ONLY DO WE PROVIDE FOR
18 EFFICIENCY AND COORDINATION MORE EASILY WHEN CASES ARE IN ONE
19 COURT, BUT IT ALSO IS SOMETHING THAT PRESERVES RIGHTS AT TRIAL.
20 SO THAT IS WHY IT IS AN IMPORTANT MATTER TO US.

21 IF THE PLAINTIFFS ARE NOW SAYING THAT WELL -- (PHONE
22 INTERRUPTION) -- JCCP, THEN THE DEFENDANTS ARE GOING TO HAVE TO
23 THINK ABOUT WHAT THEY WOULD WANT TO DO WITH THOSE CASES. AND
24 MAYBE FORUM NON CONVENIENS MOTIONS WOULD BE FILED THERE TO SEND
25 THE CASES TO VARIOUS OTHER PLACES. BUT, QUITE FRANKLY, IT'S

1 TROUBLING NOW THAT THE PLAINTIFFS HAVE DECIDED TO CHANGE THEIR
2 INTENTIONS OR TO INDICATE THAT THEY CHANGED THEIR MINDS ON
3 REALLY WHAT THEY WANT TO WITH RESPECT TO THESE CASES.

4 **THE COURT:** THANK YOU FOR ADDRESSING THAT.

5 I AM GOING TO TAKE THE MATTER UNDER SUBMISSION, AND I
6 WILL RULE SHORTLY ON THE ISSUES. BUT THANK YOU. THIS HAS BEEN
7 VERY HELPFUL.

8 JUDGE HIGHBERGER, DO YOU HAVE ANYTHING YOU WOULD LIKE
9 TO ADDRESS FROM THE STANDPOINT OF YOUR CASES OR THE
10 RELATIONSHIP OF THE CASES AT ALL?

11 **JUDGE HIGHBERGER:** ON THE REMAND QUESTION, I SIMPLY
12 SAY BETTER YOU THAN ME. I DON'T ENVY YOU THE TASK. NO.
13 THINGS SEEM TO BE PROCEEDING FAIRLY SMOOTHLY. I DON'T KNOW
14 WHETHER *CORBER V. XANODYNE* IS GOING TO -- OR OTHERWISE KNOWN AS
15 *ROMO V. TEVA PHARMACEUTICALS* -- IS GOING TO IMPACT THE STATUS
16 OF MY DOCKET. IF THE DEFENDANTS CARE TO GIVE ME ANY HEADS-UP
17 ON THAT I WOULD LISTEN, BUT THEY MAY CHOOSE TO KEEP THEIR
18 POWDER DRY. SO I'LL TOSS THAT QUESTION TO THE DEFENDANTS'
19 DIRECTION.

20 **THE COURT:** YOU FOLKS WANT TO SAY ANYTHING ON THE
21 DEFENSE SIDE IN RESPONSE TO THAT, OR KEEP YOUR POWDER DRY, AS
22 THE JUDGE SAYS?

23 **MR. KING:** I'M SORRY. I MISSED THE QUESTION, JUDGE
24 HIGHBERGER.

25 **JUDGE HIGHBERGER:** THE GIST OF IT IS SHOULD I EXPECT

1 MORE REMOVAL ACTIVITY EITHER AS TO PURELY NEW FILINGS OR EVEN
2 ATTEMPTS TO FIGURE OUT HOW TO SCRATCH OUT SOME OF THE CURRENT
3 PENDING CASES, AND RUSH THEM DOWN TO JUDGE BATTAGLIA IN FEDERAL
4 COURT?

5 **MR. KING:** I REALLY DON'T KNOW THE ANSWER TO THAT
6 QUESTION BECAUSE IT COULD VERY WELL DEPEND ON THE CASE. YOU
7 KNOW, IF IT'S A PANCREATITIS CASE, THE ANSWER WOULD BE NO. IF
8 IT'S A PANCREATIC CANCER CASE, I GUESS IT'S SOMETHING THAT WE
9 WOULD HAVE TO TAKE A LOOK AT. I JUST DON'T KNOW.

10 **JUDGE HIGHBERGER:** BECAUSE, CANDIDLY, ME AND MY
11 COLLEAGUES HERE IN L.A. COMPLEX PROGRAM NEED TO MIND THE STORE
12 IN KNOWING ABOUT WHAT OUR DOCKETS ARE GOING TO LOOK LIKE IN THE
13 YEAR THREE OR FIVE, AND SO IT'S INTERESTING TO SEE THAT *CORBER*
14 *V. XANODYNE/ROMO V. TEVA* JUST CAME OUT FROM THE NINTH CIRCUIT
15 EN BANC. BUT I'M IN A BAD POSITION TO FORECAST WHAT PRACTICAL
16 IMPACT, IF ANY, IT'S GOING TO HAVE ON WHAT'S GOING TO SHOW UP
17 ON MY DOCKET. WE ARE INTERESTED IN TRYING TO FORECAST AS WELL
18 AS WE CAN, BUT AT THE MOMENT WE FEEL LIKE AMATEUR
19 METEOROLOGISTS.

20 **THE COURT:** THANK YOU, JUDGE.

21 IT LOOKS LIKE WE ARE SET AS A GROUP, THE BIG GROUP,
22 TO TALK AGAIN FEBRUARY 2ND AT 3:00 P.M., ANOTHER TELEPHONIC
23 STATUS CONFERENCE. OF COURSE, IF SOMETHING COMES UP IN THE
24 INTERIM, YOU ALL HAVE THE PHONE NUMBER AND WE WILL BE HERE.

25 MEANTIME, I WILL LOOK FORWARD TO THAT REDLINE COPY

1 WITH THE NEW LANGUAGE ON NOTICE, SO I CAN RESOLVE THAT FINAL
2 ISSUE FOR YOU THERE. AND I WILL SEND YOU A WRITTEN ANALYSIS BY
3 WAY OF AN ORDER ON THE REMAND ISSUE AFTER DELIBERATING NOW WITH
4 YOUR ADDITIONAL INFORMATION.

5 SO WITH ALL OF THAT, FOLKS, I WILL BID YOU A HAPPY
6 HOLIDAYS AND PLEASANT EVENING, AS WELL AS ADIEU. SO WE'LL BE
7 IN RECESS AND WE'LL TALK TO YOU DOWN THE ROAD. GOOD NIGHT.

8 (PROCEEDINGS CONCLUDED AT 4:31 P.M.)

9 CERTIFICATION

10 I HEREBY CERTIFY THAT I AM A DULY APPOINTED,
11 QUALIFIED AND ACTING OFFICIAL COURT REPORTER FOR THE UNITED
12 STATES DISTRICT COURT; THAT THE FOREGOING IS A TRUE AND CORRECT
13 TRANSCRIPT OF THE PROCEEDINGS HAD IN THE AFOREMENTIONED CAUSE
14 ON DECEMBER 11, 2014; THAT SAID TRANSCRIPT IS A TRUE AND
CORRECT TRANSCRIPTION OF MY STENOGRAPHIC NOTES; AND THAT THE
FORMAT USED HEREIN COMPLIES WITH THE RULES AND REQUIREMENTS OF
THE UNITED STATES JUDICIAL CONFERENCE.

15 DATED: DECEMBER 14, 2014, AT SAN DIEGO, CALIFORNIA.

16 S/N _____
17 JEANNETTE N. HILL, OFFICIAL REPORTER, CSR NO. 11148

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19 INDEX TO EXHIBITS

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DECEMBER 11, 2014